

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

VICTOR LARUE PAGE, JR.,

Defendant-Appellant.

UNPUBLISHED

August 23, 2007

No. 268541

Oakland Circuit Court

LC No. 05-202639-FC

Before: Owens, P.J., and White and Murray, JJ.

PER CURIAM.

After a jury trial, defendant Victor LaRue Page, Jr., was convicted of two counts of first-degree criminal sexual conduct, MCL 750.520b. He received concurrent sentences of 25 to 75 years' imprisonment for each conviction. He appeals as of right. We affirm.

I. Facts

The victim, a mildly retarded 19-year-old female, met defendant at a shopping mall in late 2003. Apparently defendant and the victim exchanged telephone numbers and called each other occasionally. On February 2, 2004, defendant asked the victim to join him for a meal at a local Coney Island restaurant. The victim agreed. Defendant drove to the victim's home to pick her up. According to the victim, Pierre Wallace and Robert Wilson accompanied him.

Apparently defendant, the victim, Wallace, and Wilson then went to the restaurant. After they ate, the victim asked defendant to take her home. Instead, defendant, the victim, Wallace, and Wilson went to Wilson's apartment. When the group arrived at Wilson's apartment, Wallace asked the victim if he could show her something in the basement. Defendant accompanied Wallace and the victim to the basement. Roscoe West was sitting on a couch in the basement when the trio entered.

The victim's clothes were removed without her permission. Defendant and Wallace then held the victim down as West prepared to engage in intercourse. Although the victim screamed and told him to stop, West inserted his penis in her anal cavity. West then turned the victim and inserted his penis in her vagina, again without her permission. West and Wallace then held the victim down as defendant inserted his penis in her vagina without her consent. After defendant had intercourse with the victim, West again inserted his penis in the victim's vagina without her permission. Defendant later admitted that he had also placed his finger in the victim's vagina.

After the assault ended, West threatened to kill the victim if she told anyone about what she had endured. Wallace, defendant, and West then left. The victim put on her clothes and called a female friend to pick her up from Wilson's apartment and take her to her sister's residence.

When the victim arrived at her sister's home, she took a shower. The victim then told her sister about the assault. The victim was then taken to the emergency room of a local hospital, where a sexual assault examination was performed. This medical examination confirmed that the victim had been sexually assaulted.

II. Motion for Mistrial

Defendant argues that the trial court abused its discretion when it denied his motion for a mistrial. We disagree. "We review for an abuse of discretion a trial court's decision on a motion for a mistrial." *People v Bauder*, 269 Mich App 174, 194; 712 NW2d 506 (2005).

A defendant has a constitutional right to confront his accusers. *People v Watson*, 245 Mich App 572, 584; 629 NW2d 411 (2001). This right insures that "the witness testifies under oath at trial, is available for cross-examination, and allows the jury to observe the demeanor of the witness." *Id.*, quoting *People v Frazier (After Remand)*, 446 Mich 539, 543; 521 NW2d 291 (1994) (BRICKLEY, J.). However, "the Confrontation Clause guarantees only 'an opportunity for effective cross-examination, not cross-examination that is effective in whatever way, and to whatever extent, the defense might wish.'" *People v Chavies*, 234 Mich App 274, 283; 593 NW2d 655 (1999), overruled in part on other grounds *People v Williams*, 475 Mich 245 (2006), quoting *United States v Owens*, 484 US 554, 559; 108 S Ct 838; 98 L Ed 2d 951 (1988).

Defendant argues that he was entitled to a mistrial because he could not effectively cross-examine the victim. The record shows that, at times, the victim did not want to interact with defense counsel and failed to answer certain questions during cross-examination. However, the victim testified that she could not remember everything that occurred on the night that she was assaulted and that she did not understand some cross-examination questions. "[A] defendant's right of confrontation is not denied even if the witness, on cross-examination, claims a lack of memory." *Watson, supra* at 584. Although defense counsel asked the victim certain questions more than once, the victim answered when her memory permitted. Further, the victim was mildly retarded, which was likely the reason why she could not comprehend many of the cross-examination questions.

"A mistrial should be granted only for an irregularity that is prejudicial to the rights of the defendant and impairs his ability to get a fair trial." *People v Haywood*, 209 Mich App 217, 228; 530 NW2d 497 (1995) (internal citations omitted). Although the record shows that defense counsel had some difficulty cross-examining the victim, we cannot conclude that this difficulty prevented defendant from receiving a fair trial. Defense counsel was able to cross-examine the victim regarding the events that occurred inside the apartment without frequent interruption. Further, defense counsel questioned the victim regarding inconsistencies between her testimony and the statements that she made to authorities soon after the incident. Finally, defense counsel used the victim's unwillingness to interact with him and answer his questions to defendant's advantage during his closing argument, highlighting her negative behavior in order to call her credibility into question.

In any event, the trial court instructed the jury that when determining the credibility of a witness, it should consider whether the witness seemed to have a good memory, whether the witness evaded questions, and the maturity of the witness. “It is well established that jurors are presumed to follow their instructions.” *People v Graves*, 458 Mich 476, 486; 581 NW2d 229 (1998). We presume that the jury took the victim’s behavior at trial into account when weighing her credibility. Because defendant has failed to show that he was denied a fair trial, the trial court did not abuse its discretion when it denied his motion for a mistrial.

III. Questioning of Res Gestae Witness

Defendant argues that the trial court abused its discretion when it prevented the defense from questioning witnesses regarding Pierre Wallace’s criminal investigation and his alleged involvement in this matter. We disagree. We review a trial court’s evidentiary decisions for an abuse of discretion. *People v Manser*, 250 Mich App 21, 31; 645 NW2d 65 (2002).

Although a defendant has a right to confront his accusers, “[n]either the Sixth Amendment’s Confrontation Clause nor due process confers on a defendant an unlimited right to cross-examine on any subject.” *People v Canter*, 197 Mich App 550, 564; 496 NW2d 336 (1992). “Cross-examination may be denied with respect to collateral matters bearing only on general credibility, as well as on irrelevant issues.” *Id.* (internal citation omitted). However, “[a] limitation on cross-examination preventing a defendant from placing before the jury facts from which bias, prejudice, or lack of credibility of a prosecution witness might be inferred constitutes denial of the constitutional right of confrontation.” *People v Cunningham*, 215 Mich App 652, 657; 546 NW2d 715 (1996).

During trial, defendant was precluded from questioning any witness, including Wallace, about the criminal investigation into Wallace’s involvement in this matter. Defendant argues that the evidence surrounding Wallace’s criminal investigation was relevant to the victim’s credibility and should have been admitted. Evidence is relevant if it has “any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” MRE 401. “Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.” MRE 403.

The excluded evidence would have showed that Wallace was investigated, but not charged, for his involvement in this matter. At most, the evidence may have cast doubt on the victim’s claim that Wallace held her down as she was assaulted, which would have likely damaged her credibility. Further, the evidence that defendant wished to introduce was cumulative to Wallace’s testimony regarding the events in question. When Wallace testified, he denied any involvement in the incident at issue. According to Wallace, he arrived at the apartment with Roscoe West after leaving his girlfriend’s apartment. Wallace said that he did not tell the victim that he wanted to show her anything in the basement and did not take her to the basement. Wallace claimed that the only time he went to the basement that night was to tell the victim and West to come upstairs because he wanted to leave.

Wallace’s denial of any involvement in this matter contradicts the victim’s claim that he held her down as she was assaulted. Moreover, when he testified regarding the circumstances

under which the police questioned him regarding the incident, Wallace informed the jury that the police questioned him, but after he submitted his statement he was “free to leave.” Based on Wallace’s testimony, the jury could have inferred that Wallace was investigated and that no charges were initiated against him.

Again, the evidence regarding Wallace’s criminal investigation was only relevant to challenge the victim’s credibility. Although the trial court precluded defense counsel from questioning witnesses regarding the criminal investigation into Wallace’s involvement in this matter, Wallace independently testified that he was not involved in the sexual assault and that he was questioned by the police, but was released. Accordingly, the evidence that defendant sought to introduce through the criminal investigation testimony was presented to the jury through Wallace’s testimony. Therefore, the trial court did not abuse its discretion when it limited questioning regarding Wallace’s criminal investigation.

IV. Calling a Res Gestae Witness

Defendant argues that the trial court abused its discretion when it denied his request to call a res gestae witness. We disagree. We review a trial court’s decision to permit or deny the late endorsement of a witness for an abuse of discretion. *People v Gadomski*, 232 Mich App 24, 32-33; 592 NW2d 75 (1998).

A res gestae witness is a person who witnessed some event in the continuum of the criminal transaction and whose testimony would aid in developing a full disclosure of the facts at trial. *People v Long*, 246 Mich App 582, 585; 633 NW2d 843 (2001). During trial, based on its claim that “Jenna” was present during some of the events that transpired on the night in question, defendant sought to present “Jenna” as a late-endorsed res gestae witness. Defendant claimed that “Jenna’s” testimony was necessary to challenge the victim’s credibility and to provide information about the victim’s appearance that night. The trial court denied defendant’s request because it concluded that “Jenna’s” proposed testimony would have been collateral. We agree.

Despite defendant’s claim, no evidence was presented that showed that “Jenna” was present that night. Although defendant claims that Wilson and Wallace placed “Jenna” at or near the apartment that night, the evidence presented at trial indicates otherwise. Wilson denied that he accompanied defendant, the victim, and Wallace to the Coney Island. Instead, he testified that he was in his apartment when defendant, the victim, Wallace, and West arrived. At trial, Wilson assumed that the victim, defendant, Wallace, and West came to his apartment in the same car, and he speculated that another woman might have been in the car with them. However, Wilson then testified that he did not see *anyone* exit the car, so he did not know if another female was outside at that time. Wilson also claimed that the victim was the only female to enter the apartment that night.

Wallace also failed to place “Jenna” inside the car or apartment that night. Wallace testified that he had spent the evening at his girlfriend’s house and then went to Wilson’s apartment to pick up defendant and drop West off. Wallace testified that defendant, the victim, and Wilson were inside the apartment when he and West arrived. According to Wallace’s testimony, he was not in the car with the victim at any point that night. The victim also testified that she was the only female present that night.

On the basis of the testimony presented, we conclude that “Jenna” was “clearly not a res gestae witness inasmuch as she did not witness some event in the continuum of the criminal transaction and her testimony would not have aided in developing a full disclosure of the facts at trial.” *Long, supra* at 585. No testimony was presented that placed “Jenna,” or any woman besides the victim, in the car or at the apartment that night. Because the evidence established that “Jenna” was not a witness to any event on the night in question, the trial court did not abuse its discretion when it denied defendant’s request to present her as a res gestae witness.

V. Cumulative Error

Defendant argues that the cumulative effect of the errors asserted in the previous issues denied him a fair trial. We disagree. We review this issue to determine if the combination of alleged errors denied defendant a fair trial. *People v Knapp*, 244 Mich App 361, 387; 624 NW2d 227 (2001).

The cumulative effect of several minor errors may warrant reversal even where individual errors in the case would not warrant reversal. *People v Cooper*, 236 Mich App 643, 659-660; 601 NW2d 409 (1999); *People v Miller (After Remand)*, 211 Mich App 30, 34; 535 NW2d 518 (1995). In order to reverse on the grounds of cumulative error, the errors at issue must be of consequence. *Cooper, supra* at 659-660. In other words, the effect of the errors must have been seriously prejudicial in order to warrant a finding that defendant was denied a fair trial. *People v Griffin*, 235 Mich App 27, 46; 597 NW2d 176 (1999). [*Id.* at 388.]

“Defendant’s argument that the cumulative errors deprived him of a fair trial is without merit. Because no errors were found with regard to any of the above issues, a cumulative effect of errors is incapable of being found.” *People v Mayhew*, 236 Mich App 112, 128; 600 NW2d 370 (1999).

Affirmed.

/s/ Donald S. Owens

/s/ Helene N. White

/s/ Christopher M. Murray